

1 The Honorable Robert S. Lasnik
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 T-MOBILE WEST LLC and INDEPENDENT
TOWERS HOLDINGS, LLC,

11 Plaintiffs,

12 v.

13 THE CITY OF MEDINA,

14 Defendant.

No. 2:14-CV-1455-RSL

15 DECLARATION OF LINDA
16 WHITE ATKINS IN SUPPORT OF
17 PLAINTIFFS' AND
18 DEFENDANT'S REPLY IN
19 SUPPORT OF JOINT MOTION
20 FOR ENTRY OF STIPULATED
21 JUDGMENT

22 Linda White Atkins declares and states:

23 1. I am an attorney in the law firm of Davis Wright Tremaine LLP and am counsel
24 for Plaintiff T-Mobile West LLC in this case. I am over the age of 18 years, competent to
25 testify herein, and make this declaration on personal knowledge of the facts stated.

26 2. Attached hereto as Exhibit A is a true and correct copy of Intervenor Medina
27 Residents' Initial Expert Disclosure (Document 29) in this matter.

28 3. Attached hereto as Exhibit B are true and correct copies of excerpts from the
29 administrative record below in this matter (pages from Staff Analysis and Recommendation on
30 Independent Towers Special Use Permit and Variance, dated July 8, 2014).

4. Pursuant to 28 U.S.C. § 1746 and the laws of the State of Washington, I declare under penalty of perjury that the foregoing is true and correct.

DATED this 25 day of June, 2015 at Bellevue, Washington.

Linda White Atkins
LINDA WHITE ATKINS

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8UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE9 T-MOBILE WEST, LLC and
10 INDEPENDENT TOWERS HOLDINGS,
11 LLC,

Plaintiffs,

12 vs.
1314 CITY OF MEDINA, WASHINGTON,
15

Defendant.

Civil Action No.: C14-1455RSL

INTERVENOR MEDINA RESIDENTS'
INITIAL EXPERT DISCLOSURE17 Rule 26(a)(2) requires a party to make disclosures to the other party regarding the identity
18 of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703 or
19 705. Intervenors Medina Residents, an unincorporated association; Cynthia F. Adkins and John
20 F. Harris, a married couple; Kanan and Bhavnish Lathia, a married couple; Eric and Sarah
21 Oeltjen, a married couple; Laurel and Steve Preston, a married couple; Brett and Jenny Duncan,
22 a married couple; and RespectMedina, a Washington nonprofit organization (collectively,
23 "Medina Residents"), submits these initial disclosures in response to that requirement.
2425 1. Initial Disclosure of Expert Testimony.
2627 (a) None.
28

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EXHIBIT A

1 Pursuant to Rule 26 and the Joint Discovery Plan in this matter, Medina Residents
2 reserves the right to supplement expert disclosure, including experts it may use in rebuttal.

3 Dated this 30th day of January, 2015.

4 Respectfully submitted,

5 s/G. Richard Hill
6 WSBA # 8806
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21 Email: imorrison@mhseattle.com
22 Attorney for Intervenor Medina Residents

EXHIBIT A

DECLARATION OF SERVICE

I hereby certify that on January 30, 2015, I electronically filed the foregoing **MEDINA RESIDENTS' INITIAL EXPERT DISCLOSURES** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

- Christopher D Bacha: Chris@KenyonDisend.com, kathys@kenyondisend.com,
margaret@kenyondisend.com, mary@kenyondisend.com, sheryl@kenyondisend.com
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ScottThompson@dwt.com, sheilacroisier@dwt.com

Laura Courtney

PL-13-031 and PL-13-032

EXHIBIT B



CITY OF MEDINA

501 Evergreen Point Road, Medina, WA 98039
Phone: (425) 233-6400 Fax: (425) 451-8197

**STAFF ANALYSIS AND RECOMMENDATION
INDEPENDENT TOWERS SPECIAL USE PERMIT AND VARIANCE**

Prepared by: Jenny Ngo and Robert Grumbach, AICP
Date: July 8, 2014

Summary of Recommendations: Recommend approval of special use permit, subject to conditions. The City's policy is that it does not make recommendations on variance applications.

Part 1 – General Information

CASE NOS: PL-13-031 (SUP) and PL-13-032 (Variance)

LOCATION: Fairweather Park, N.E. 32nd Street

TAX PARCEL NUMBER: 2425049088

PROPERTY OWNER: City of Medina

APPLICANT: Daniel Schweigard of Independent Towers (Agent)

LEGAL DESCRIPTION OF FAIRWEATHER PARK PROPERTY:

A Portion of the Northwest Quarter of the Southeast Quarter lying Southerly of NE 32nd Street;
LESS the South 650 feet;
LESS Roads;
LESS State Highway;
LESS that portion per Deed under Recording No. 20110815000719.

Deed Recording # 20110815000719:

All that portion of the hereinafter described Parcel "A" lying within the following described tract:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 305+67.57 on the SR 520 line survey of SR 520 Evergreen Point Bridge to SR 405 Vicinity and 174.95 feet northeasterly therefrom; thence southeasterly to a point opposite HES 306+46.79 on said line survey and 159 feet northeasterly therefrom; thence southeasterly to a point opposite HES 309+68.25 on said line survey and 150 feet northeasterly therefrom; thence northwesterly, parallel with said line survey, to a point opposite HES 305+72.99 thereon; thence northerly to the point of beginning:

PARCEL "A":

The north 325 feet of the south 975 feet of the norhwwest quarter of the southeast quarter of Section 24, Township 25 North, Range 4 East, W.M., in King County, Washington; EXCEPT that portion conveyed for road by Recording Numbers 529873, 529874, 1271851 and 567521;

fence approximately eight feet high will be located on the east side of the equipment housing structure to provide concealment and sound attenuation. Additionally, landscaping will be included on the north and south sides of the building.

2. Independent Towers Holdings, LLC constructs and leases wireless communication facility support structures. Pursuant to MMC 20.37.140(B)(1), in order to demonstrate need, an applicant must be a carrier of personal wireless services or have a binding agreement with one or more carriers who provide personal wireless services. Independent Towers Holdings owns and operates wireless communication infrastructure, but does not provide personal wireless services. The applicant has entered into an agreement with T-Mobile West, LLC to lease space on this facility (Exhibit 14). T-Mobile West is a subsidiary of T-Mobile USA, Inc. who is a national provider of wireless voice, messaging, and data services and is publicly traded and primarily owned by Deutsche Telekom AG. They are licensed with the Federal Communication Commission (FCC) to provide wireless service for the Seattle-Tacoma-Bremerton, WA market (FCC Registration No. 1565449) (Exhibit 10).
3. Verizon Wireless, a provider of wireless services, joined the application as a co-location applicant following submission of the original special use permit and variance applications. Verizon was proposing to add additional antennas and equipment to the facility. However, Verizon Wireless has subsequently withdrawn from the application. The conceptual plans in Exhibit 7 include information on Verizon Wireless, but because Verizon is no longer an applicant and therefore not being analyzed as part of this proposal, a condition will be recommended to specifically excluding Verizon equipment from this approval.
4. The subject project area is a leased area in Fairweather Nature Preserve and Park. The Fairweather Park is a public park owned by the City of Medina and used for active and passive recreational activities. According to King County Assessor records, the park consists of 10.14 acres (the Medina Comprehensive Plan identifies the park as having 10.4 acres). The park is comprised of two distinct public use areas. The western two acres is an active use area with a small playfield, two tennis courts, a tennis practice backboard, basketball hoop and parking facilities. There is a row of mature trees along the western edge of the park. The remaining eastern part of the park is natural forest with a stream passing through it and winding walking trails. The park is located directly north of State Route 520 and is bounded by Evergreen Point Road to the west, N.E. 32nd Street to the north and 80th Avenue N. to the east.
5. The Medina City Council tentatively approved a lease (Exhibit 12) with Independent Towers Holding at their March 14, 2011 regular meeting to rent 5,600 square feet of the park space west of the tennis courts for a wireless communication facility. Approval of the lease was contingent upon the City Council approving the design of the facility and the city manager working out administrative details.

The city conducted a process to obtain public input on possible design options for the facility (Exhibit 37). Public notice was sent to the entire community via postcard, posted on the city's website, and sent to parties who signed up on the city's e-gov notice delivery system. The design options included a flagpole, stick, architecture feature, artificial tree, light pole, and a monument. Based on the community input received at the time, the City Council selected the light pole design option at their June 13, 2011 regular meeting. The administrative details were resolved and the city manager signed the lease.

Analysis: The applicant has provided evidence that the purpose for installing the wireless communication facility is to complete the network, including coverage area and quality of service. According to the coverage maps, there is a service coverage gap in the area and along SR 520 floating bridge without this facility in place (Exhibit 15). The facility will serve to "provide continuous coverage along SR-520 (the freeway as well as the floating bridge) between Bellevue / Medina / Hunts Point on the eastern side of the lake and Montlake on the west side of the lake. In addition, the site also provides coverage to the residential areas to the north and south of the freeway" (Exhibit 5, page 2).

- b. MMC 20.37.140(C)(2): The inability of the carrier providing the personal wireless services to provide personal wireless services to Medina residents and/or visitors using other facilities, either existing or planned, that are inside and outside of the city limits.

Analysis: Three existing wireless communication facilities are located nearby. These facilities do not provide sufficient coverage to avoid gaps in service in the northern portion of Medina and along SR 520 (Exhibits 4 and 5). The applicant states that without this facility, "there would be no existing wireless service coverage in the area [meaning T-Mobile service], and the propose facility use is meant to provide for and remedy this gap in service coverage (Exhibit 4, page 4).

- c. MMC 20.37.140(C)(3): The inability of the carrier providing the personal wireless services to fulfill the need for the facility with other sites available outside of the city limits; and

Analysis: Due to the location and topography of the site area, no other sites outside of the city limits can provide an equivalent coverage area (Exhibit 15, page 1). The applicant states that the "site will provide coverage to the west along the 520 floating bridge...this coverage cannot be achieved with existing facilities, including the relatively new tower at Hunts Point or the potential facilities outside the City of Medina" (Exhibit 5, page 2).

- d. MMC 20.37.140(C)(4): How the types and location chosen for the wireless communication facility needed in completing a local or regional network for personal wireless services are the least intrusive upon the surrounding area.

Analysis: The City Council conducted a public process to obtain input on the design of the wireless communication facility (See Analysis 6). This was a condition for approving the lease with Independent Towers Holding. Of the six design options, the light pole design was selected as the preferred design to be the least intrusive on the community. The applicant states that "there are several aspects of the facility which were chosen to reduce the intrusion into the residential setting." This includes concealing antennas that will reduce clutter; using a preferred design option selected by the City Council; and siting in a location that is "away from residences and placed with the freeway in the backdrop of residential views" (Exhibit 31, pages 3-4).

- 28. The applicant submitted two coverage analyses that evaluate existing and proposed service coverage (Exhibits 16 and 41). Based on first set of coverage maps (Exhibit 16), the northern area of Medina and State Route 520 receives poor to no service coverage. The maps show Reference Signal Received Power (RSRP), a measurement of signal power